IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Criminal Application No.4558 of 2006

1. Mr. Anil Kesawlal Bodani

2. Mr.Surendra Beliram Kanwal Applicants

Vs.

State of Maharashtra Respondents

Mr.Mahesh Jethmalani, Sr. Counsel with Mr. Pranav Badheka and Mr.P.G.Sabnis for applicants.

Mr.Y.S. Shinde, APP for State.

Mr.Shrish Gupte, Sr. Counsel with Mrs.Anjali Patil - Contractor for complainant.

CORAM: B.H.MARLAPALLE,J.

January 15, 2007.

P.C.

1. Heard Mr. Mahesh Jethmalani, the learned Sr. Counsel with Mr.Pranav Badheka for the applicants who are impleaded as accused in C.R. No.315 of 2006 registered with the Wanvadi police station for the offences punishable under Sections 420, 468, 471 and 120-B of IPC at the instance of Ashwin Mehta. The

applicants had applied for anticipatory bail before the Sessions Court at Pune and by the order dated 15/12/2006 the learned Ad-hoc Addl. Sessions Judge at Pune was pleased to reject the said application registered as Bail Application No.2365 of 2006. Hence this application for anticipatory bail before this Court.

2. The learned APP has opposed this application and has also placed before me the investigation papers. Mr.Gupte, the learned Senior Counsel also appeared on behalf of the original complainant and emphasised that the custodial interrogation of the applicants is required.

3. It appears that one Mr. Govind Gupta and the present applicants have a dispute regarding the share holding of Manju Meadows Pvt. Ltd. and the applicant no.1 has filed Civil Suit No.924 of 2001 on the Original Side of this Court and in the said Suit he has been appointed as the Court Receiver for the said company. As per the applicant no.1 sometimes in March 2004 onwards Manju Meadows came to be appointed as agents to run and maintain Gupta Livestock Breeding and Research Farm whose horses are also kept

at the farms of Manju Meadows Pvt.Ltd. The complaint filed by Mr.Ashwin Mehta on 2/8/2006 pertains to the alleged auction of horse named Sizzling Melody and born in the year 2003. It is alleged that the said horse was sought to be sold by one Vinod Anand as an agent of Gupta Livestock Breeding and Research Farm and the present applicant did not release the said horse on account of certain dues for the maintenance of the said horse and other horses in the stud farm. It is further contended that the horse was also sought to be sold in auction on or about 2nd February 2005 and was taken out of the stud farm. This sale is alleged to be without authority and in any case the auction did not materialise. Thus the horse is where it was. Whether it is in the custody of its rightful owners or in the custody of the applicants is not an issue which forms part of the complaint. The horse has crossed the age of two years and, therefore, it cannot be auctioned now. The dispute is on account of these two instances viz. one alleged illegal sale on 18th January 2005 and unauthorised auction sought to be held on 2nd February 2005 of the said horse.

4. A similar complaint was filed with Bangalore

Police on 22nd April 2006 and registered as FIR No.85/2006. The investigation was completed on 10/9/2006 and as per the said report Shri Vinod Anand was authorised to sell the horse in auction and Bangalore Turf Club or for the matter Stud Book Authority of India could not provide any material prima facie to believe that Shri Vinod Anand was acting without any authority on behalf of M/s. Gupta Livestock Breeding and Research Farm. The Investigating Officer of the Bangalore Police, therefore, submitted a report pointing out that the case was of civil in nature and the remedy to the complainant was to approach to the competent civil court.

5. The learned APP while opposing this application for anticipatory bail submitted that some forged stamps were prepared and utilised in the alleged auction held on 18th January 2005 and during the course of investigation some incriminating information has come to surface for which the custodial interrogation of the applicants is required. I have gone through the statements of Dr. Suhas Madhav Thorat, a resident of Parvati Darshan, Pune, Shri Satish Krupashankar Shukla, a resident of

Mumbai and Shri Rajkumar Amarnath Rayjada, a resident of Pune. The stamp alleged to have been prepared by way of forgery has been, as noted from the papers placed before me and in the possession of Royal Western India Turf Club, signed by Shri Vinod Anand on or about 18/1/2005. After the complaint was closed by Bangalore police, it appears a fresh complaint was filed on 2/8/2006 by Mr.Ashwin Mehta with Wanvadi Police Station at Pune and substantially covering the same dispute. I am, therefore, of the prima facie view that the dispute between Gupta Farm and the applicants is substantially of civil nature and criminal offence, if any, appears to be only an offshoot of and incidental to the said dispute. It is evident that the police machinery is being misused. In any event, I have no doubt in my mind that the custodial interrogation of the applicants is not at all necessary and hence this application succeeds. If the complainant has been put to financial losses by the alleged acts of the applicants, he has a civil remedy against them.

6. The application is hereby allowed and it is directed that in the event of arrest of the applicants or any one of them in connection with C.R.

No.315 of 2006 registered with Wanvadi Police Station, Pune, each one of them shall be released on furnishing a PR bond in the sum of Rs.50,000/- each and with one solvent surety for the like amount. Undoubtedly as and when the Investigating Officer requires any of the applicants in investigation, they will co-operate.

(B.H